

**FOOD
INDUSTRY
ALLIANCE OF
NEW YORK
STATE, INC.**



FoodScan

UPDATE ON ISSUES AND EVENTS FOR NEW YORK STATE FOOD EXECUTIVES

JUNE/JULY 1998

ISSUE HIGHLIGHTS:

- End-of-Session Wrap-Up
- Impact of Unemployment Insurance Legislation

**GROCERS FARE WELL
... In '98 Leg. Session**

The 1998 state legislative session will likely be remembered for being the first session in years to end on time. Aside from passing the Unemployment Insurance bill (which will translate into meaningful savings for many grocers), the legislature did not take on such high profile issues as Jenna's law (which would have ended parole for violent felons) and casino gambling. Credit for the prompt end to the session goes to Senate Majority Leader Joe Bruno who insisted that all legislative activity stop on the scheduled last day of the session. Soon after the Senate stopped working, the Assembly followed suit. The quick adjournment assisted FIA's successful efforts in opposing legislation that would have been problematic for the industry. In fact, none of the bills FIA opposed throughout the legislative year passed. In addition to unemployment insurance reform, FIA succeeded in getting two other bills beneficial to members passed: affirmative defense for alcohol sales and wine in gift baskets. All three bills are detailed below:

**UNEMPLOYMENT
INSURANCE REFORM
... Here At Last**

• **S.7817/A.11396** by Senator Bruno (R-Saratoga) and Sheldon Silver (D-New York) implements long-sought reform of the state's unemployment insurance system and will benefit "positive employers" like food stores. The bill increases unemployment insurance benefits while adjusting rates to more fairly reflect an employer's experience. This adjustment should mean considerable savings for the food industry. Governor Pataki has indicated he will sign this bill into law. The Unemployment Insurance (UI) Reform bill includes the following:

Wage Reporting - New York State will now join the remaining 49 states in administering UI benefit determinations on the basis of wage reports filed quarterly by all employers instead of requesting wage data from specific employers at the time an application for UI benefits is received.

Maximum UI Benefits - Maximum UI benefits will increase from \$300 to \$365 per week effective September 7, 1998 and to one-half the average weekly wage in covered employment in September 2000. Benefits will be based on 1/26th of the high quarter remuneration if remuneration for that quarter is less than \$3,575 and 1/26th if more.

UI Funding Formulas - There are a number of substantial alterations to New York's UI funding formulas, including:

1. Increases taxable wage base from \$7,000 to \$8,500.
2. Reduces contributions from employers with favorable UI experience (i.e., positive account balance employers).
3. Sharply increases payments from employers with unfavorable experience (the top rate increasing from 5.45% to 8.5% if the fund balance is less than 0% and the minimum rate set at 0.9%).

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4. Generally speaking, experience-rates UI taxes which currently are "socialized"
 - including the subsidiary tax.
5. Increases the point at which negative balances are transferred (i.e., forgiven) from -2% to -21%.
6. Grants negative balance employers with stable total wages a credit of their account percentage of up to 4% so that their experience tax rate is reduced but to no lower than 6.1%.

Employers With Standing - Allows any employer whose employer account might be charged for a benefit to participate in hearings and to have access to all records of any resulting hearing.

Return-to-Work - Installs a provision that would require claimants receiving benefits for more than 13 weeks to accept employment offered to them if the wage is at least 80% of the wages received in the prior employment.

Re-employment Services Fund - Creates new fund to pay for the cost of automated systems and staff to assist laid-off workers in returning to work funded by penalty payments and by all employers at a tax of 0.075% of quarterly taxable payrolls.

Amnesty - Creates a three-month amnesty program for repayment of delinquent UI tax debt.

SUPPORT NEEDED FOR INDUSTRY FRIENDLY BILLS

It is unclear whether Governor Pataki will sign either of the following two bills passed by the legislature. Members are encouraged to voice support for these proposals by calling the Governor's office at (518) 474-8390 or writing him: Governor George Pataki, The Executive Chamber, State Capitol, Albany, NY 12224 urging passage. If you would like copies of these bill, call Jaimie Ponziello in the Albany office at (518) 434-8144, ext. 222.

... Affirmative Defense

- **S.3358-B/A.11286** by Senator Volker (R-Livingston) and Assemblyman Schimminger (D-Erie) increases penalties for minors who attempt to purchase alcohol sales by increasing monetary penalties and imposing a conditional loss of driving privileges. More importantly, the bill establishes for the first time an affirmative defense against a State Liquor Authority proceeding to revoke, cancel or suspend a license where the cashier, who authorized the illegal sale to a minor, participated in a SLA approved training program. This provides a strong incentive for retailers to voluntarily establish server training programs. The licensee will still be subject to a monetary penalty but not to the loss of a license. Currently, licensees who provide cashier training receive no protection or credit against loss of licenses where the employees disregard the alcohol sales training.

... Wine In Gift Baskets

- **S.6911/A.10080** by Senator Kuhl (R-Steuben) and Assemblyman Schimminger (D-Erie) authorizes persons licensed to sell beer at retail for off-premises consumption to package bottles of wine and/or champagne in gift baskets where the wine and/or champagne was purchased in a package store. This bill does not allow grocers to actually sell wine or champagne, but it would mark the first time food stores would be legally authorized to handle these products. Arguing in favor of the measure, FIA pointed out that the bill will meet an existing consumer demand by authorizing wine and/or champagne to be included in a gift basket and will generate additional revenues for both food and liquor stores alike. Stores would not be able to charge an additional amount for including the alcohol beverage in the gift basket. A similar bill passed both houses of the legislature last year but was vetoed by the Governor because it would "... circumvent existing restrictions on the sale of wine in grocery and convenience stores." The bill which passed this year sought to address the concerns Governor Pataki expressed in his veto message.

BILLS HELD	FIA succeeded in stopping or amending the following bills:
... Northeast Dairy Compact	<ul style="list-style-type: none"> • S.2088/A.3378-A by Senator Kuhl (R-Steuben) and Assemblyman Parment (D-Chautauqua) would have enabled the state to join the Northeast Interstate Dairy Compact. In a surprising turn of events, Assemblyman Parment, chair of the Assembly Agriculture Committee, removed the enacting clause from the bill he sponsored. By striking the enacting clause, the bill was effectively dead. Just prior to the end of session, colleagues in the Assembly Ag Committee scurried to introduce their own bills. FIA opposed both A.9911 by Assemblyman Crouch (R-Chenango) and A.10907 by Assemblyman Magee (D-Madison) based on concern over artificially inflated prices on milk as a staple product and the real prospect of reduced consumption. According to industry calculations, the price of milk would increase by 24 cents per gallon if New York joined the Northeast Dairy Compact on July 1, 1998. Status: S.2088 passed in the Senate. Assembly bills were held in committee.
... Pre-packed Salads	<ul style="list-style-type: none"> • A.9890-A by Assemblywoman Pheffer (D-Queens) required signage telling customers they must wash pre-packed salads before consumption. FIA opposed the measure on the basis that supermarket produce sections are already filled with so many signs that consumers pay little attention to them. In light of the strong support for the bill, FIA amended the bill to require the notice be printed on the salad package so that consumers would have the notice before them as they prepare the salad for consumption. Status: Out of Senate Committee/Passed by Assembly.
... Produce Labeling	<ul style="list-style-type: none"> • S.7406/A.9416 by Senator Kuhl(R-Steuben) and Assemblyman Magee (D-Madison) attempted to amend the Ag & Markets law in relation to labeling fresh fruits, vegetables and meats with place of origin information. In FIA's view the bill was flawed for several reasons, the first being that labeling meat is preempted by the USDA. Second, the term "place of origin" is not clearly defined and could mean country, state, region or county. Regardless, it would not provide meaningful or useful information to consumers. In addition, produce is frequently commingled by the wholesaler and by retailers as they buy product from different suppliers. Tracking and posting the information in an intelligent and useful fashion would be near impossible. Status: Held in Senate Committee/Held in Assembly Committee
... Dating Perishable Foods	<ul style="list-style-type: none"> • A.3860-B by Assemblyman Dinowitz (D-Bronx) required dating and recommended conditions of storage for perishable foods and provided penalties for violations. FIA opposed this bill and previous versions because it considers storage conditions and proper handling of perishables more important in determining if foods are fit for consumption than arbitrary dating requirements. Status: Held in Senate Committee/Passed Assembly
... Mark-Ups On Cigarettes	<ul style="list-style-type: none"> • S.5688/A.10200 by Senator Stafford (R-Hamilton) and Assemblyman Klein (D-Bronx) increased the minimum mark-up required by law in the sale of cigarettes. FIA opposed the bill because it would have widened the price disparity for those retailers competing with illegal Indian sales to non-Indians. While opposed to the large increases contained in the bill, FIA suggested the bill be amended to provide equal increases to all segments of the industry (agents, wholesalers, chains, retail dealers) in order not to hurt small independent retailers. The mandatory mark-ups for stampers and wholesalers in the bill were twice that for small retailers, in effect enriching stampers and wholesalers by decreasing retailer margins. Status: Held in Committee in both houses
... Gift Certificates	<ul style="list-style-type: none"> • S.1502-A by Senator Hannon (R-Nassau) created special escrow accounts for monies received from the purchase of merchandise or gift certificates. The bill was intended to protect the holder of a gift certificate in the event of a bankruptcy. However, in FIA's understanding of the Federal Bankruptcy Code, the bill would not create a secured credit status and, as a result, the gift certificate holder would not receive any greater distribution under this bill than any other general unsecured creditor. In addition, the bill would create

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difficulties regarding gift certificates sold at a discount for charitable purposes.
Status: Held in Committee

... Label Placement

• A.3311 by Assemblywoman Mayersohn (D-Queens) would have expanded current law prohibiting the placement of an item price or store sticker over the expiration date of over-the-counter drugs to prohibit placement over any portion or section of the label. In its memorandum of opposition, FIA noted that this legislation would make it virtually impossible for food retailers to comply with local item pricing laws in pricing cosmetics and over-the-counter drugs.

Status: Held in Committee

... Internet Sales

• S.7712/A.11219 by Senator Fuschillo (R-Nassau) and Assemblyman Klein (D-Bronx) prohibited the retail sale of cigarettes or tobacco products via the internet and the delivery of these products to retail purchasers by common or contract carriers. The bill was intended to prevent Indians from selling tax-free tobacco products to non-Indians via the internet and mail but it could have caused problems for grocers using the internet to service home-delivery customers.

Status: Held in Senate Committee/Out of Assembly Committee

... Tobacco & Minors

• A.9288 by Assemblyman Luster (D-Tompkins) prohibited direct or unrestricted access to tobacco products by minors, going beyond even Food and Drug Administration proposed regulations. FIA opposed the measure because the bill was overly restrictive and too broad in scope.

Status: Out of Assembly Committee

... NYC Tribunal

• S.4103-C/A.3785-C by Senator Goodman (R-New York) and Assemblyman Farrell (D-New York) would have authorized establishment of the New York City Tribunal. This bill, first introduced in 1994, would consolidate in a single agency located in the Department of Finance all administrative adjudications currently conducted by the Departments of Consumer Affairs and Health and the Environmental Control Board. FIA opposed the proposal.

Status: Held in Committee in both houses

Another Affirmative Defense Bill passed in the Senate but was held in the Assembly:

... Affirmative Defense

• S.7318-B/A.10771-C by Senator Wright (R-Oswego) and Assemblyman Klein(D-Bronx) provided for the scanning of drivers license bar codes to determine the validity of the drivers license information. The bill provided penalties for individuals who transfer an ID card to another person to aid in an illegal alcohol or tobacco sale. If a retailer scanned a license that was being used for an illegal purchase, the scanner data could be used as an affirmative defense. This bill would be marginally helpful to retailers and is likely to be re-introduced next session. However, the affirmative defense bill (detailed on page two) which passed the legislature this session and is schedule to be sent to the Governor, provides a more complete affirmative defense for illegal alcohol sales.

Status: Passed Senate/Held in Assembly Committee

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